



County of Milwaukee

# Office of the Sheriff

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August 29, 2008

The Honorable Jim Doyle  
Governor  
State of Wisconsin  
State Capitol, Room 115 East  
Madison, WI 53702

Dear Governor Doyle:

In 2006, I sensed a storm gathering strength. To gain a national perspective, I sent members of my staff to the MADD/NHTSA Law Enforcement Leadership Summit of non-OWI checkpoint states, in New York City. Based in large part on the information sharing and data discussed at that event, a core group, under the control of Wisconsin DOT's Bureau of Traffic Safety (BOTS) Major Daniel Lonsdorf, convened a similar state summit in 2007, in the Dells. Their purpose was to bring the message of sobriety checkpoints to the attention of Wisconsin legislators, law enforcement and prosecutors. Transportation Secretary Busalacchi appeared at this event, to voice the support of your administration to the goals of decreasing drunk driving deaths on our state roadways.

In 2008, this group met, in Arlington, Texas, to discuss how to bring OWI checkpoints to the states that currently prevent their implementation, either through statutory prohibition, a constitutional prohibition, or simply court rulings that prevent their use.

The time for meetings has passed.

I sent members of my patrol division to the City of Orange, California, to shadow Officer Armando Plasencia, who, in a one-year period, made 325 OWI arrests. Clearly, there was something to be learned here; a better way to enforce OWI laws. In January 2008, we started our current OWI initiative in Milwaukee County. By dedicating officers to this crime and deploying them in a data-driven, focused manner, in the first six months of 2008 we have increased our OWI arrest rate by over 63% (860 arrests YTD as compared to 525 at the same time in 2007.)

In the last two years, the MCSO has been stable in the area of 1000 OWI arrests in Milwaukee County. This year, we anticipate doubling that number, nearing 2000 arrests. But Governor, as an over thirty-year law enforcement professional, I must firmly state that we cannot arrest our way out of this problem. An OWI arrest has immediate value, as it takes a

drunk off the road. But to the extent that the arrest doesn't result in a meaningful adjudication of the matter through the sentencing stage, and to the extent that our OWI enforcement efforts clearly aren't resulting in the culture change that we need in this state, I would characterize these efforts as a failing strategy. Arrest has its place, but as part of a multi-pronged attack: education, treatment, prosecution, and the part that we are most markedly failing at, deterrence. Patrolling and arresting drunks is expensive and time consuming. As a rule, I don't like playing hide-and-seek games with criminals. It is intolerable when our citizen's lives are in the balance. It's time to come out into the open. And my peers, such as International Association of Chief's of Police (IACP) President Joseph Carter, agree with me:

*"Impaired driving is not just another traffic offense; it is a serious crime that often causes needless deaths and injuries. More than two decades of research have demonstrated that sobriety checkpoints and other law enforcement efforts make a difference. They are vitally effective techniques to get impaired drivers off of our roads."*

We know the data. Alcohol-related crashes are most common between Midnight and 3 AM, on the weekends. In 2006, the average positive alcohol concentration test in Wisconsin was a staggering .17 AC.\* Kari Kinnard, Executive Director for MADD Wisconsin, a passionate voice for toughening how we handle impaired driving, has told me that in discourse between MADD and your office, you have signaled support for sobriety checkpoints, the expanded use of ignition interlock devices in OWI-related sentencing, and generally enhanced penalties for OWI offenses.

Why checkpoints? Governor, in an OWI saturation patrol model, which the limitations of current state statutes forces me to employ, ten of my deputies may, in a given night, arrest ten impaired drivers. Maybe. On a good night. And, every other motorist on the roadway sees what he or she has always seen...a car pulled over on the side of the road. Life goes on for them. In a well-run sobriety checkpoint, five officers will interact with thousands of motorists. They may make the same number of arrests, but all of those motorists will be impacted. They will go home, and tell their families that they went through a checkpoint. They'll talk about it at work the next day. Our children will ask questions about what they have experienced. OWI enforcement will be discussed in a way that integrates it into our lives. Every driver on our roadways will know that around the next bend they may be interacting with a law enforcement officer. Designated driver usage will explode. The culture will change.

Governor, this isn't just a law enforcement opinion or issue; it is a public health issue, and the National Centers for Disease Control and Prevention agree. Sobriety checkpoints reduce alcohol-related crashes.

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\* WisDOT, BOTS, Policy Analysis and Local Programs, 2006

*"Fewer alcohol-related crashes occur when sobriety checkpoints are implemented, according to a CDC report published in the December 2002 issue of Traffic Injury Prevention. The goal of these interventions is to deter alcohol-impaired driving by increasing drivers' perceived risk of arrest. The conclusion that they are effective in reducing alcohol-related crashes is based on a systematic review of research about sobriety checkpoints. The review was conducted by a team of experts led by CDC scientists, under the oversight of the Task Force on Community Preventive Services—a 15-member, non-federal group of leaders in various health-related fields. The review combined the results of 23 scientifically-sound studies from around the world. Results indicated that sobriety checkpoints consistently reduced alcohol-related crashes, typically by about 20 percent. The results were similar regardless of how the checkpoints were conducted, whether short-term or when checkpoints were used continuously for several years. This suggests that the effectiveness of checkpoints does not diminish over time.\**

In a 2007 state ranking, based on the percent of traffic fatalities that involve an impaired driver, Wisconsin ranked dead last...not just 50<sup>th</sup>, but 51<sup>st</sup>, as the District of Columbia was included in the ranking. We reside behind every other state in our union, with over 42% of our traffic fatalities involving a drunken driver compared to an 18% rate in the first place state of Utah. Many may dismiss this ranking system through anecdotal justifications. Everyone knows that Utah, as a largely Mormon culture, eschews the use of alcohol, right? Milwaukee is *Beer City USA*, a tavern culture! The second place state, with a 24% rate of traffic fatalities involving a drunk driver, is *Kentucky*. Bourbon production is one of the Bluegrass State's most recognized and enduring legacies, with ninety-eight percent of all domestic bourbon being made there, according to the Kentucky Distillers Association. It is part of their culture. But, apparently, driving drunk is not; at least not to the extent that it is here in the Dairy State.

As the former Attorney General of our great state, you know that Wisconsin State Statute 349.02 (2)(a) specifically prohibits the employment of sobriety checkpoints, by virtue of the following language:

*"Notwithstanding sub. (1), a police officer, sheriff, deputy sheriff, traffic officer or motor vehicle inspector may not stop or inspect a vehicle solely to determine compliance with a statute or ordinance...unless the police officer, sheriff, deputy sheriff, traffic officer or motor vehicle inspector has reasonable cause to believe that a violation of a statute or ordinance...has been committed."*

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\* Elder RW, Shults RA, Sleet DA, Nichols JL, Zaza S, Thompson RS. Effectiveness of sobriety checkpoints for reducing alcohol-involved crashes. *Traffic Injury Prevention* 2002;3:266-74.

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In 1990, the United States Supreme Court, in *Michigan v. Sitz*, gave their opinion of sobriety checkpoints in no uncertain terms:

*"No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage...The increasing slaughter on our highways . . . now reaches the astounding figures only heard of on the battlefield...Conversely, the weight bearing on the other scale — the measure of the intrusion on motorists stopped briefly at sobriety checkpoints — is slight.*

*In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment."*

This is a public safety matter where the needs of the public must outweigh the interests of the powerful lobbies that encircle and obfuscate this issue. As sheriff, an elected official, I represent the *public's* interest in matters such as these. Governor, we cannot just talk tough about drunk driving, we must advocate through action. I have seen firsthand the carnage. I have met with the survivors of these tragedies, as I know that you have. And I am enraged.

On April 25, 2008, another in a series of interminable drunk driving tragedies rocked Southeastern Wisconsin. While many have become inured to these slaughters, this one was particularly compelling: A bright, 39-year-old professional, a pregnant school administrator, Jennifer Bukosky, murdered along with her 10-year-old daughter, Courtney, and her unborn daughter, Sophia. Her 12-year-old son, Zachary, was gravely injured as well. But in this tragedy, the killer was compelling as well: Mark M. Benson, a 55-year-old former surgeon who had been convicted three times of driving under the influence. His third conviction and license revocation came two days before the fatal crash, and in fact, Benson was to begin a 75-day jail term the following month.

So, a scene that has been played out innumerable times, and that we have all seen, was repeated: Public cries of indignation, a roadside vigil, and a memorial service with three caskets: One large, and two small. In the media, Jennifer's grieving mother, Judith Jenkins, grasped for reason, valiantly hoping to see something salvaged from the tragic crash:

*"I'd like to think that my daughter and two granddaughters didn't die in vain, and that some good will come out of this. We're working really hard with legislators to*

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*change laws. And I don't think we'll feel safe until those laws are changed."*

Governor, any system that cannot protect a family from the murderous impulses of a Mark Benson is irretrievably broken. This tragedy was not a surprise. It was absurdly predictable.

I was so moved by the tragic death of the Bukosky family that I contacted Jennifer's parents, Judith and Paul Jenkins, of Mequon, to offer them my condolences. As the quote properly reflects, the Jenkins family, while racked with grief, aren't only looking back and reflecting on the measure of their daughter's and granddaughter's lives. They are looking forward, towards change. In our subsequent meeting, they voiced their willingness to meet with anyone, any legislator, any professed public servant, to strengthen impaired driving enforcement in our state. Their signatures below attest to their strength, and resolve. I have looked them in the eye, Governor, and they aren't going to quit this crusade. There are thousands more like them out there, and they need a champion.

There must be a sense of urgency about this situation. Drunk driving is visiting *havoc*, a word that I do not use lightly, on our citizens. Norman Y. Mineta, US Transportation Secretary from 2001 to 2006, called highway deaths a "national epidemic." I couldn't agree more. In a March 2008 column in the Wall Street Journal, he described the culture of our roadways thusly:

*"Last year, 965 people lost their lives in air crashes around the world. But more than 3,000 people will die on the world's highways today. More than 1.2 million people die each year from traffic injuries, a toll comparable to the number of people killed by malaria or tuberculosis. For every death there are at least 20 serious injuries. This is an epidemic in every sense of the word. Yet it is a hidden epidemic. It doesn't make the news because these deaths occur one or two at a time; because nine out of 10 fatalities occur in the developing world; and because in many countries we don't have accurate statistics to measure the problem. But mostly it doesn't make the news because we are numbed by a sense of fatalism, by a feeling that these are just accidents, unpredictable and unpreventable; we see them as a fact of life, an accepted side effect of our modern mobility."*

Governor, I implore you to use the power of your office to call for the legislature to allow sobriety checkpoints in Wisconsin, and publicly affirm your intention to sign such legislation if delivered to your care. I sense that the time is ripe for the public to support sobriety checkpoints. I am strident in my resolution to take advantage of what I perceive to be a groundswell of support. The time is now. Now. Now.

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Sincerely,

S:// David A. Clarke Jr.  
David A. Clarke Jr., Sheriff  
Milwaukee County

S:// Kari Kinnard  
Kari Kinnard, Executive Director  
MADD Wisconsin

S:// Judith Jenkins  
Mrs. Judith Jenkins  
Mequon

S:// Paul Jenkins  
Mr. Paul Jenkins  
Mequon